

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

THE YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF MERIDEN

Employer ¹

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & IMPLEMENT WORKERS OF
AMERICA, AFL-CIO, REGION 9A

Petitioner

Case No. 34-RC-1795

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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The Employer's name appears as amended at the hearing.

5. The Employer is a social service agency providing various community services including crises intervention for sexual assaults, and childcare, recreational, job re-entry and child development programs. Solely involved in this proceeding are the approximately 50 employees employed by the Employer in its "Head Start" Program, a child development program which increases the "social competence" of 3 and 4 year old children to prepare them for school. Although otherwise in accord as to the scope and composition of the units, the parties disagree as to the status of 3 site supervisors and as many as 9 teachers whom the Employer, contrary to the Petitioner, would exclude as supervisors within the meaning of the Act.

Classrooms for the Employer's Head Start Program are currently situated in 2 separate facilities, on Liberty Street and Colony Street respectively, in Meriden, Connecticut. The undisputed supervisory hierarchy of the Head Start Program consists of its Director, Susan Hunter, who is responsible to the Employer's Chief Executive Officer; a Child Services Coordinator, who reports to Hunter; and a Teaching Supervisor, who reports to the Child Services Coordinator. Hunter and the Child Services Coordinator have offices at the Liberty Street facility. The Teaching Supervisor has offices at both facilities.

The record indicates that one of the site supervisors works at the Colony Street facility, and that the other two work at the Liberty Street facility. It is not clear where the disputed teachers work but it appears that 5 work at Liberty Street and 4 work at Colony Street. It is clear that both the site supervisors and the teachers primarily function as teachers, working in their own respective classrooms where each is assisted by a teaching assistant and a childcare worker.

In arguing for the exclusion of the site supervisors, the Employer relies upon their authority to schedule, discipline, evaluate and recommend the hire of teachers, teaching assistants and childcare workers. In arguing for the exclusion of the teachers, the Employer relies upon their authority to discipline, evaluate and recommend the hire of teaching assistants and childcare workers.

Scheduling: The record reveals that when a teacher is unexpectedly absent a site supervisor is responsible for finding a replacement teacher. It appears that in doing so the site supervisor either uses a "substitute list" or, if no one else is available,

arranges for classes to be consolidated. There is no evidence or contention that the site supervisor can require unscheduled teachers to act as substitutes or that the consolidation of classrooms requires any exercise of discretion or independent judgement.

Discipline: Although the Employer's Chief Executive Officer generally testified that both classifications of individuals have the authority to issue discipline in the form of verbal and written warnings, suspensions and terminations, she confirmed the Petitioner's evidence, that neither the site supervisors nor the teachers have ever issued any form of discipline. In this regard, the job descriptions of the site supervisors and the teachers contain no reference to any such authority. Moreover, there is no evidence that either the site supervisors or the teachers have ever been advised that they possess the authority to discipline. Indeed, it appears that they understand their authority to discipline merely consists of reporting instances of inappropriate behavior to the Teaching Supervisor. There is no evidence that such reports are accompanied by recommendations for personnel action.

Evaluations: Both the teachers and the site supervisors prepare annual evaluations for their teaching assistants and childcare workers. For reasons not explained in the record, the evaluations for the childcare workers are prepared jointly with the Teaching Supervisor. Although the Employer's Chief Executive Officer testified that these evaluations are used to determine raises and promotions, it appears from the record that this is a new procedure which has not yet been implemented. More significantly, the evaluation forms do not ask that the evaluator make any recommendations and there is no evidence or contention that recommendations for raises or promotions are otherwise advanced or solicited.

Hiring: The record indicates that the site supervisors and the teachers may recommend the hiring of teachers, teaching assistants and childcare workers. Such recommendations, however, are clearly subject to the evaluations made by other individuals whose participation in the hiring process carries greater weight. Thus, the Employer's Chief Executive Officer simply notes that site supervisors "could be in on the screening" of resumes of job candidates who are going to be interviewed; that although both site supervisors and teachers participate in hiring interviews, this does not occur

regularly; and that such interviews traditionally include a parent ² and the Teaching Supervisor or the Child Services Coordinator.

It is well established that the burden of proving supervisory status is upon the party asserting it. *Pine Brook Care Center, Inc.*, 322 NLRB 740 (1996), and cases cited therein at footnote 3. In the instant matter, based upon the record as a whole and for the reasons noted below, I find that the Employer has failed to meet this burden.

More specifically, I find that the responsibility to accommodate minimal and necessary staffing requirements does not involve independent judgment, and thus, is essentially a clerical function. *Youville Health Care Center, Inc.*, 326 NLRB No. 52 (August 27, 1998); *Illinois Veterans Home at Anna, L.P.*, 323 NLRB 890, 891 (1997). With regard to discipline, I find that there is insufficient evidence that the site supervisors and teachers actually possess such authority, other than that which is merely reportorial and which falls short of effective recommendations. See e.g. *Rest Haven Living Center, Inc.*, 322 NLRB 210, 212 (1996); *S. S. Joachim & Anne Residence*, 314 NLRB 1191, 1194 (1994). Similarly, I find that the site supervisors' and teachers' authority to prepare evaluations which will be used to determine raises and promotions but which contain no recommendations, is speculative, and has no discernable impact on the personnel status of the employees being evaluated. See e.g., *Nymed, Inc., d/b/a Ten Broeck Commons*, 320 NLRB 806, 813 (1996). Finally, I find that the occasional participation with other individuals in screening resumes or interviewing applicants is insufficient evidence of effective hiring recommendations. *The Catholic Bishop of Chicago*, 220 NLRB 359, 360 (1975); *Volt Information Sciences, Inc.*, 274 NLRB 308, 331 (1985). In view of the foregoing, I find that neither the site supervisors nor the teachers are supervisors within the meaning of the Act, and I shall include them in the units found appropriate below.

Based upon the stipulation of the parties and the record as a whole, I find that the site supervisors and the teachers are professional employees whose inclusion in a unit with non-professional employees is precluded by Section 9(b)(1) of the Act, unless a majority of the professional employees vote for inclusion pursuant to the Board's

² The record indicates that all hiring must be approved by a group of parents referred to as the "policy council."

decision in *Sonotone Corporation*, 90 NLRB 1236, 1241 (1950). Accordingly, I shall direct separate elections among the following voting groups of professional and non-professional employees:

Voting group (a): All full-time and regular part-time professional employees employed by the Employer in its Head Start Program including site supervisors and teachers; but excluding all other employees, bus drivers, bus monitors, cooks, head cooks, cook aides, Head Start maintenance employees, the component worker/receptionist, family advocates, childcare workers, teacher's assistants, the Lead Family Advocate, the Teaching Supervisor, the Child Services Coordinator, and guards and supervisors as defined in the Act.

Voting group (b): All full-time and regular part-time non-professional employees employed by the Employer in its Head Start Program including bus drivers, bus monitors, cooks, head cooks, cook aides, Head Start maintenance employees, the component worker/receptionist, family advocates, childcare workers, teacher's assistants; but excluding site supervisors, teachers, the Lead Family Advocate, the Teaching Supervisor, the Child Services Coordinator, and guards, other professional employees and supervisors as defined in the Act.

The employees in voting group (a) will be asked the following questions on their ballot:

(1) Do you desire to be included in the same unit as non-professional employees employed at The Young Women's Christian Association of Meriden for the purpose of collective bargaining? (2) Do you desire to be represented for the purpose of collective bargaining by International Union, United Automobile, Aerospace & Implement Workers of America, AFL-CIO, Region 9A? If a majority of the employees in voting group (a) vote yes to the first question, indicating their desire to be included in a unit with the non-professional employees, they will be so included; and their vote on the second question will then be counted with the votes of the non-professional employees in voting group (b) to decide if they will be represented by the Petitioner for the combined bargaining unit (professional and non-professional). If, on the other hand, a majority of the employees in voting group (a) do not vote for inclusion with the non-professional employees, they will not be included with the non-professional employees and their votes on the second question will then be separately counted to decide whether they wish to be represented by the Petitioner in a separate unit.

In view of the above, my unit determination is based, in part, on the results of the professional employee vote. Therefore, I now make the following findings in regard to the appropriate unit:

(1) If a majority of the professional employees vote for inclusion in a unit with the non-professional employees, I find that the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time professional and non-professional employees employed by the Employer in its Head Start Program including site supervisors, teachers, bus drivers, bus monitors, cooks, head cooks, cook aides, Head Start maintenance employees, the component worker/receptionist, family advocates, childcare workers, and teacher's assistants; but excluding the Lead Family Advocate, the Teaching Supervisor, and the Child Services Coordinator, all other employees and guards, other professional employees and supervisors as defined in the Act.

(2) If a majority of the professional employees do not vote for inclusion in a unit with the non-professional employees, I find the following two units to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time professional employees employed by the Employer in its Head Start Program including site supervisors and teachers; but excluding all other employees, bus drivers, bus monitors, cooks, head cooks, cook aides, Head Start maintenance employees, the component worker/receptionist, family advocates, childcare workers, teacher's assistants, the Lead Family Advocate, the Teaching Supervisor, the Child Services Coordinator, and guards and supervisors as defined in the Act.

All full-time and regular part-time non-professional employees employed by the Employer in its Head Start Program including bus drivers, bus monitors, cooks, head cooks, cook aides, Head Start maintenance employees, the component worker/receptionist, family advocates, childcare workers, teacher's assistants; but excluding site supervisors, teachers, the Lead Family Advocate, the Teaching Supervisor, the Child Services Coordinator, and guards, other professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted by the undersigned among the employees in the units described above at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by International Union, United Automobile, Aerospace & Implement Workers of America, AFL-CIO, Region 9A. To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the elections should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Elections, the Employer shall file with the undersigned, two separate eligibility lists containing the *full* names and addresses of all the eligible voters in each of the voting groups. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the lists available to all parties to the elections. In order to be timely filed, such lists must be received in the Regional office, One Commercial Plaza, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before March 2, 2000. No extension of time to file these lists shall be

granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 9, 2000.

Dated at Hartford, Connecticut this 24th day of February, 2000.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

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